IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.634 of 1997

Vithal Dharma Mogare
Occ: Business r/o Amrapalli
Gayatri nagar, Malegaon Camp
Malegaon Dist. Nasik ..Petitioner

vs.

1. The Collector of Nasik
(State Excise Department)
Nasik

2. The Superintendent of State
Excise Department, Nasik

3. The State of Maharashtra

4. Chandan Mhasade
r/o Kailas Nagar, near Shriram
Nagar, Behind Market Yard,
Malegaoan, Dist. Nasik

5. Raghunath Khare
r/o Kailas Nagar, near Shriram
Nagar, Behind Market Yard,
Malegaon, Dist. Nasik

6. Ramdas Garud
R/o Kailas Nagar, near
Shriram Nagar, Behind Market
Yard, Malegaon, Dist. Nasik
7. Omprakash Sharma
r/o Kailas Nagar
Behind Shriram Nagar,
Behind Market Yard, Malegaon
Dist. Nasik

8. Munna J.
r/o Kailas Nagar, near Shriram
Nagar, Behind Market Yard,
Malegaon, Dist.Nasik

9. Sitaram Dalchand Somani
r/o Mahalaxmi Housing Society
Near Hutama Samark, Malegaon
Dist. Nasik ..Respondents

Shri A.R.Shaikh for petitioners.

Shri C.R.Sonawane, A.G.P. for respondent nos. 1 to 3.

Shri Rameshs D.Patil with Shri Shishir Hiray for respondent nos. 4 to 9.

CORAM: A.P.SHAH
AND S.C.DHARMADHIKARI JJ
14th OCTOBER, 2004

ORAL JUDGMENT: (Per A.P.Shah J.)

1. Heard Advocates.

2. The petitioner has been carrying on his business of country liquor shop since 1974. Initially the petitioner has been given licence bearing CL-III No.143/73/74 for sale of country liquor at Survey No.42-B, Aazar Kholi, Kusumbe Road, Malegaon. In or about 1994, the petitioner applied to the Collector of Nashik for shifting his liquor shop from Survey No.42-B, Aazar Kholi, Kusumbe Road, Malegaon to Plot no.1, Survey No.330 situated at Sangamneshwar, Malegaon. By order dated 16th November, 1994 the Collector rejected the petitioner's application. The appeal preferred by the petitioner to the Commissioner of Excise was also rejected on 10th April, 1995. Thereafter by order dated 29th February, 1996 the Home Secretary allowed the revision application filed by the petitioner and remanded the matter back to the Collector with a direction to consider the

petitioner’s application after verifying the actual distance between the shop and religious places.

3. The Collector carried inspection and vide his order dated 8th February, 1994 rejected the petitioner’s application for shifting the country liquor shop. In the mean time the Collector also passed an order dated 28th August, 1996 whereby he suspended the petitioner’s licence under sec.54(1)(c) of the Bombay Prohibition Act and directed the petitioner to propose new premises for his country liquor shop. The petitioner challenged the said suspension order as well as order rejecting shifting of the shop before the Commissioner. Both the appeals were heard by the Commissioner and by common order dated 5th October, 1996 the appeals were allowed and both the orders of the Collector were set aside and the petitioner’s request for shifting his shop to the new place was granted and pending shifting the petitioner was allowed to conduct his business from the old premises at Kusumbe Road, Malegaon.

4. Pursuant to the said permission the petitioner shifted his business and also paid the cash challan and transfer charges and fee. By letter dated 28th October, 19976 the Superintendent of Excise

informed the petitioner that in respect of shifting of petitioner's shop from Kusumbe Road, Malegaon to Sangamneshwar, the change is effected in licence III of the petitioner. The petitioner accordingly shifted to the new shop at Sangamneshwar and started carrying his business. By letter dated 31st December, 1996 issued from the office of the respondent no.1 under the signature of respondent no.2, the petitioner was informed that since the petitioner's liquor shop is shifted to Sangamneshwar the office has received complaints from the people residing in that area as well as there is a letter from the Police Superintendent, Nashik that due to the said shop there is law and order problem. The petitioner was, therefore, asked to shift the shop to some other place. It is this letter of respondent nos. 1 and 2 which is challenged in the present petition.

5. We have heard the learned Counsel appearing for the petitioner and the learned A.G.P. for respondent nos. 1 to 3. Respondent Nos. 4 to 9 and their Advocate are absent. Respondent Nos. 1 to 3 have not cared to file reply to the petition and thus the averments made in the petition have gone practically unchallenged. The learned A.G.P. was unable to produce any complaint received from

the public. He is also unable to explain as to why the petitioner was not given an opportunity of hearing before directing the petitioner to shift the shop to some other place. There is absolutely no material to show that continuation of the petitioner's shop has created any nuisance to the people residing in the adjoining area or created any law and order problem. In the circumstances the impugned letter dated 31st December, 1996 is quashed and set aside. Rule is accordingly made absolute in terms of prayer clause (a).

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE FCJURISDICTION

Writ Petition No. 634 of 1997

Date of Judgment: 14th October,2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.C.DHARMADHIKARI J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?